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SPL. CIVIL APPLICATION NO. 1537 of 1981

Date of Decision : 25.1.1996

For Approval & Signature

THE HON'BLE MR. JUSTICE A.R DAVE

AND

THE HON'BLE MR. JUSTICE

1. Whether reporters of Local Papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any other order made thereunder ?
5. Whether it is to be circulated to the Civil Judge ?

Mr. J.M.Patel, learned Advocate for the Petitioner

Mr. M.N.Desai , learned Advocate for the Respondent nos.1 & 2

Mr. Ashish Desai, learned AGP for the Respondent no.3 State.

CORAM : A.R DAVE, J.

25.1.1996

ORAL JUDGMENT

The petitioner has filed the present petition challenging the validity of the order dated 31st July 1980 passed by the

Special Secretary, Revenue Department, Gujarat State, Ahmedabad under the provisions of The Bombay Prevention of Fragmentation & Consolidation of Holdings Act, 1947 (herein after referred to as the Act).

The facts in nutshell as submitted by Shri Patel are that notice under sec.6(2) of the Act was not served upon the concerned parties before the proceedings under the Act had been initiated. He has drawn my attention to page 20 - Annexure : C to the petition which reveals that no notice under sec.6(2) of the Act was served upon the concerned parties as stated by the clerk before the Deputy Collector, Baroda in the proceedings initiated under the Act. Ultimately, the Deputy Collector, Baroda had dropped the proceedings under the Act vide his order dated 21st April 1979 because he came to the conclusion that notice under sec.6(2) of the Act had not been served upon the concerned parties. Being aggrieved by the above-referred order, Revision Application was filed before the Spl. Secretary, Revenue Department, and after hearing the concerned parties, Spl. Secretary remanded the matter to the Deputy Collector by the order dated 13th September 1979 so as to ascertain whether in fact notice under sec.6(2) of the Act was served upon the concerned party or not.

In pursuance of the above-referred order passed by the Spl.Secretary, Revenue Department, the matter was remanded and evidence was led before the Deputy Collector, Baroda. On 12th May 1980, when the concerned witnesses were to be examined, advocate appearing for the petitioner could not remain present and he had given an application for adjournment which was rejected by the Deputy Collector and in absence of the petitioner's advocate, the concerned Deputy Mamlatdar was examined. The deposition of the concerned Deputy Mamlatdar is at page 31 Annexure : I to the petition. Ultimately, after considering the evidence adduced by the Deputy Mamlatdar on 12th May 1980, the Deputy Collector came to the conclusion that notice under sec.6(2) of the Act had been served upon the concerned party. It is pertinent to note that no opportunity was availed by the petitioner's advocate to cross-examine the Deputy Mamlatdar who was examined on 12th May 1980 as on 12th May 1980, advocate appearing for the petitioner had prayed for adjournment.

Upon perusal of the record, it is clear that a statement was made by the concerned clerk on 16th April 1979 that no notice under sec.6(2) of the Act was issued and served. The said statement was made upon perusal of the file and relevant record was also produced before the concerned Deputy Collector. Subsequently, in pursuance of the direction given by the Spl. Secretary, Revenue Department, Talati-cum-Mantri of village Kothav Ta : Karjan was also examined on 5th May 1980. Talati-cum-Mantri did not make any specific statement to the effect that notice under sec.6(2) of the Act was served upon the

concerned party. Had such notice been issued, he could have adduced necessary evidence, but he simply made a statement that he had forwarded the entire record to the office of the Mamlatdar and, therefore, on 5th May 1980, he could not make any statement with regard to the service of notice under sec.6(2) of the Act.

In view of above circumstances, especially when the petitioner's advocate had no opportunity to cross-examine Deputy Mamlatdar (Admn.) who had made a statement that notice under sec.6(2) of the Act was served upon Shri Mangankbhai Shankarbhai i.e. the person concerned from whom the land in question was purchased by the petitioner.

It is also pertinent to note that after said Deputy Manager (Admn) was examined on 12th May 1980, the petitioner's advocate had given his reply promptly on 13th May 1980 wherein he had specifically alleged that signature referred to by the Deputy Manager (Admn.) was not of Shri Mangankbhai Shankarbhai. He had also made further submission in his reply dated 13th May 1980, but it appears that those submissions were not considered by the Deputy Collector and by the order dated 28th May 1980, he had come to the conclusion that notice under sec.6(2) of the Act was served upon the concerned party.

Being aggrieved by the above-referred order, Revision Application was filed by the present petitioner which was dismissed by the Spl.Secretary, Revenue Department vide his order dated 31st July 1980. Against the above referred order dated 31st July 1980, the present petitioner has filed this petition.

Looking to the facts and circumstances of the case, it clearly appears that in the interest of justice, Deputy Collector should have granted adjournment as prayed for in the application dated 12th May 1980, especially when there is no evidence to the effect that the petitioner's advocate was trying to delay the proceedings unnecessarily. It appears that in pursuance of the notice dated 14th April 1980, Deputy Collector had initiated proceedings in pursuance of remand order passed by the Spl. Secretary, Revenue Department. In pursuance of the said proceedings, on 5th May 1980, Talati-cum- Mantri of village Kothav was examined and thereafter on 12th May 1980, the concerned Deputy Mamlatdar was examined. As stated herein above, the petitioner's advocate had prayed for time on 12th May 1980, but the said request was rejected.

In the circumstances, in my opinion, ends of justice would be served if the petitioner is given one more opportunity by remanding the proceedings to the Deputy Collector from the stage at which they were pending as on 12th May 1980.

It has been submitted by Shri Patel that the proceedings

initiated against the petitioner under the provisions of the Act are suffering from the vice of delay and latches as proceedings have been initiated after considerably long period. At this stage, I do not deal with the said submission and it will be open to the petitioner to canvass above and all other possible submissions before the Deputy Collector as and when Deputy Collector initiates the proceedings in pursuance of this order and matter is to be heard by him.

In the circumstances, the impugned order dated 31st July 1980 passed by the Spl. Secretary, Revenue Department, Gujarat State, Ahmedabad confirming the order of Deputy Collector, Baroda dated 28th May 1980, is hereby quashed and set aside. The matter is remanded back to the Deputy Collector and Deputy Collector, Baroda is directed too continue the proceedings as stated herein above and after giving opportunity of being heard to the petitioner, dispose of the matter in accordance with rules and regulations. It would be open to the petitioner to raise all the possible contentions before the Deputy Collector at the time of hearing.

Rule is made absolute to the aforesaid extent with no order as to costs.

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